

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:

James L. Halbur

**ADMINISTRATIVE
CONSENT ORDER
NO. 2010-AFO- 55**

TO:

James L. Halbur
103 East 5th
Halbur, IA
51444

I. SUMMARY

This Administrative Consent Order (Order) is entered into between James L. Halbur and the Iowa Department of Natural Resources (Department) Mr. Halbur hereby agrees to cease all illegal discharges to waters of the State, and pay an administrative penalty of \$10,000.00.

Any questions regarding this Order should be directed to:

Relating to technical requirements:

Alison Manz
IDNR Field Office #4
Sunnyside Lane
Atlantic, IA 50022
Ph: 712/243-1934

Legal Issues

Carrie Schoenebaum, Attorney
Iowa Department of Natural Resources
Wallace Building 502 E 9th St.
Des Moines, Iowa 50319-0034
Ph: 515/281-0824

Payment of penalty to:

Iowa Department of Natural Resources
Wallace Building
502 E. 9th St
Des Moines, Iowa 50319-0034

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II. JURISDICTION

This Order is issued pursuant to Iowa Code section 455B.175(1) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code Chapter 455B, Division III, Part 1, or Iowa Code Chapter 459A and the rules adopted or permits issued pursuant thereto and 567 Iowa Administrative Code (IAC) Chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

The parties hereby agree to the following statement of facts:

1. Mr. Halbur owns and/or operates an open feedlot located in Section 7, T-83-N, R-35-W Roselle Township, Carroll County, Iowa. This property is locally known as 16613 240th Street, Halbur, IA 51444. Mr. Halbur is in charge of the day to day operations of the feedlot. This facility has a reported capacity of 990 animal units.
2. On May 15, 2001, Mr. Halbur was sent a letter from the Department, informing him that his registration of his open feedlot had been received by the Department.
3. On July 31, 2001, the Department sent Mr. Halbur a letter informing him that the Department is conducting two reviews of registered open feedlots; an in-house review and then if necessary an on-site review. Based on the in-house review his open feedlot has been placed in the high priority group due to its potential to cause water pollution. This letter further explained that following the on-site inspection, if the feeding operation remained in the high priority group, it would be put on a compliance schedule so that it achieved compliance by the end of 2005.
4. On December 3, 2004, Thad Nanfito, an Environmental Specialist with the Department, conducted an on-site inspection. During this inspection he determined that the in-house review which placed the feedlot in the high priority group was accurate. While on site, he observed manure runoff from the open feedlot. This runoff was being controlled by a series of terrace runoff control structures. Mr. Nanfito and Mr. Halbur agreed that the manure runoff was entering the tile drainage system; therefore, any intakes to the tile system should be immediately closed and pooled manure in terraces should be land applied as soon as possible. Mr. Halbur agreed to implement a manure control plan and to contact an engineer for assistance. On December 15, 2004, a letter documenting this information was sent to Mr. Halbur.
5. On March 12, 2008, Mr. Nanfito conducted an on-site investigation following observation of water quality violations in Brushy Creek, a nearby waterway. While on site he observed the following:
 1. A negligible amount of clean water enters the hog pens because the facility is located at the crown of a hill;

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2 Controls have been established on the south facility pen which drains to the south. It appears that manure solids have escaped this area and entered a field; and

3 The north draining pen had a bermed area with an open outlet on the east. An erosion channel was observed which makes it easy for liquid manure to drain through it and then to Brushy Creek.

6 On March 21, 2008, a letter documenting the above observations was sent to Mr. Halbur. This letter provided a copy of the laws governing animal feeding operations and made the following recommendations to maintain compliance:

- 1 Modify solid settling controls;
- 2 Routinely remove manure from structures;
- 3 Designate a manure stacking area; and
- 4 Create a consistent plan for agronomic application of manure

7 On October 29, 2009, the Department received a complaint from Des Moines Waterworks (DMWW) alleging that manure was entering Brushy Creek. DMWW provided photos to the Department of manure entering an unnamed tributary of Brushy Creek.

8 On October 29, 2009, Ms. Manz, an Environmental Specialist with the Department, conducted an investigation. Once on site she immediately observed manure solids from Mr. Halbur's feedlot entering an unnamed tributary of Brushy Creek via a culvert under Highway N14. The liquid flowing through the culvert into the unnamed tributary of Brushy Creek was brown and she detected a manure odor. The unnamed tributary of Brushy Creek at the point of the culvert outfall was full of manure solids and foamy and the tributary itself was very turbid. Ms. Manz took photos which document these observations.

Manure controls on the southwest side of the feedlot were observed. These controls consist of a concrete apron with slatted gate outlets that release liquid. It was apparent that the slatted gate outlets were not adequately sized and the solids settling structures were not properly maintained. Iowa State Extension and Natural Resource Conservation Service (NRCS) recommend that the slats be spaced $\frac{1}{2}$ inch to $\frac{3}{4}$ inch apart. The liquid from this side of the feedlot flows through a serpentine solids settling basin. Manure was overflowing the settling basin and flowing south, through the recently harvested field.

DMWW became aware of the release at 12:30 pm on October 29, 2009. Ms. Manz arrived at 4:50 pm. In conversation Mr. Halbur informed Ms. Manz that he was aware of the spill but did not know what to do. Ms. Manz advised Mr. Halbur to obtain equipment to eliminate the flow of manure into the tributary. Within 30 minutes of this advice Mr. Halbur used his tractor to begin building a dirt berm at the solids settling basin to contain the manure. An additional berm was built in the middle of the field.

Throughout the day Ms. Manz took photographs and collected laboratory samples at various locations. The following table summarizes the laboratory samples taken during

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the October 29, 2009, investigation. The samples tested for the following pollutants: E. coli, membrane fecal coliform, total suspended solids, ammonia nitrogen, and total biological oxygen demand five day (Total BOD₅). The testing was performed by the University of Iowa Hygienic Laboratory (UHL).

Sample Locations	E coli (MPN/100mL)	Membrane Fecal Coliform MPN/100 mL	Total Suspended Solids mg/L	Ammonia Nitrogen mg/L	Total BOD (5 Day) mg/I
Halburs' outfall	8,700,000	12,000,000	7,400	220	3,000
Down Stream of Halburs' outfall	500,000	420,000	200	60	76
Up Stream of Halburs' outfall	170,000	290,000	98	2.4	29

9. On December 4, 2009, a Notice of Violation (NOV) was sent to Mr. Halbur which included an inspection report which recommended that Mr. Halbur do the following:

1. Conduct proper maintenance of the solid settling structures to provide adequate control and treatment of manure;

2. Remove manure frequently from the pens in order to decrease discharge potential; and

3. The solid settling basins are not designed to hold water. Storing liquid in any solid settling structure can produce very high ammonia levels and severely deplete the oxygen levels in the water. Therefore Mr. Halbur should pump the liquid out of the settling basins periodically to avoid future water quality violations.

A copy of the relevant Iowa Administrative Code rules was included in this inspection report.

IV. CONCLUSIONS OF LAW

The parties agree to the following conclusions of law:

1. Iowa Code section 455B.186 and 567 IAC 62.1 prohibit the discharge of pollutants into waters of the State, except for adequately treated pollutants discharged pursuant to a permit issued by the Department. A permit has not been issued for this facility; therefore, the foregoing facts establish that this provision has been violated.

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2. Iowa Code section 459A.104 requires the Environmental Protection Commission (Commission) to adopt rules related to the construction or operation of open feedlot operations. The Commission has done so at 567 IAC Chapter 65, Division II.

3. 567 IAC 65.103(4) states that

[i]f departmental evaluation determines that any of the conditions listed in paragraph 65.103(4)"a," "b," or "c" exist, the open feedlot operation shall institute necessary remedial actions within a time specified by the department to eliminate the conditions warranting the determination, if the operation receives a written notification from the department of the need to correct the conditions.

a. Settled open feedlot effluent, settleable solids from the open feedlot operation, or open feedlot effluent is being discharged into a water of the State and the operation is not providing the applicable minimum level of manure control as specified in rule 65.101(459A);

b. Settled open feedlot effluent, settleable solids from the open feedlot operation, or open feedlot effluent is causing or may reasonably be expected to cause pollution of a water of the State; or

c. Settled open feedlot effluent, settleable solids from the open feedlot operation, or open feedlot effluent is causing or may reasonably be expected to cause a violation of state water quality standards.

Based on the above stated facts the Department concludes that one or more of the foregoing conditions exist and Mr. Halbur is hereby notified that he is required to carry out the remedial measures specified in V. Order, below.

4. Iowa Code section 459A.401(1) and 567 IAC 65.101(1) require that each open feedlot operation remove all settleable solids from open feedlot effluent prior to discharge into a water of the State. The foregoing facts establish that these provisions were violated.

5. 567 IAC 61.3(2) provides general water quality criteria and prohibits discharges that will produce objectionable color, odor or other aesthetically objectionable conditions; settle to form sludge deposits; interfere with livestock watering; or are toxic to animal or plant life. Ms. Manz observed manure solids and foam in the unnamed tributary to Brushy Creek, she also detected a manure odor. Therefore the above facts indicate a violation of one or more of these criteria.

V. ORDER

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The Department hereby orders and Mr. Halbur consents to do the following:

1. Provide the Department with documentation which shows that known and subsequently discovered drainage tile lines, that are less than 4 feet deep, have been removed or rerouted so that they are separated at least 25 feet horizontally from the edge of manure storage areas. This does not need to be done if the tile lines discharge to treatment or application areas and do not discharge to waters of the state or waters of the United States.

2. Cease all illegal discharges; and

3. Pay a penalty of \$10,000.00 to the Department within 30 days of the Director of the Department signing this Order.

VI. PENALTY

1. Iowa Code sections 455B.191 and 459A.502 authorize the assessment of civil penalties of up to \$5,000.00 per day for violations of water pollution control laws; more severe criminal sanctions are also provided.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties; 567 IAC Chapter 10. Pursuant to rule 567 IAC 10.2, the Department has determined that the most equitable and efficient means of addressing the above-cited violations is the issuance of an Order with a penalty. The administrative penalty is determined as follows:

a. Economic Benefit Mr. Halbur saved time and money by not complying with Iowa law, including but not limited to failure to install proper manure controls. Moreover, to avoid runoff in this instance the manure should have been land applied. By not doing so considerable time and money was saved. Therefore it is estimated that Mr. Halbur saved approximately \$3,000.00. Therefore, \$3,000.00 is assessed for this factor.

b. Gravity of the Violation One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the Department has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. This matter involves actual impact to water quality, which was exacerbated by the failure to immediately respond to the discharge upon learning of it. Multiple rule or statutory provisions were violated including discharge to water of the State, failure to maintain the minimum manure controls, and violation of water quality standards. The violations threaten the integrity of the water quality program. For these reasons, \$3,000.00 is assessed for this factor.

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c Culpability Mr Halbur failed to take the necessary measures to properly contain runoff from the open feedlot In 2008, following water quality violations in Brushy Creek Mr. Nanafito made an on-site investigation Following this investigation Mr Nanfito mailed Mr Halbur a letter in which numerous recommendations as to how to maintain compliance were made. Mr Halbur's failure to implement these recommendations in 2008 caused the violations that are the subject of this Order. Moreover, the release that is the subject of this Order was highly visible; nevertheless, until the Department instructed Mr. Halbur to build a berm in order to stop the release, no effort had been put forth to stop the release. The retention of manure is an activity that poses substantial threat to the environment. The failure of Mr. Halbur to implement the recommendations in 2008 and to stop the release immediately demonstrates that the appropriate standard of care was not applied. This release was stopped quickly once proper measures were taken. If it would have been stopped immediately it is likely that there would not have been any water quality violations. Therefore, \$4,000.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

Iowa Code section 455B.175 and 561 IAC 7.4(1), as adopted by reference by 567 IAC Chapter 7, authorize a written notice of appeal to the Commission. This Order is entered into knowingly by and with the consent of Mr. Halbur. By signature to this Order, all rights to appeal this Order are waived.

VIII. NONCOMPLIANCE

Compliance with section V of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this Order. Failure to comply with this Order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.


James L. Halbur

Dated this 8th day of Dec, 2010


Patricia L. Boddy Interim DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 14 day of Dec, 2010

Field Office 4, EPA, Carrie Schoenebaum; Allison Manz, VIII D. 1 (a) 2 (a) 3 (a)